

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Decker Inc.,

Plaintiff,

v.

Case No. 1:05cv493

Mark Morgan, *et al.*,

Judge Michael R. Barrett

Defendants.

**ORDER**

This matter is before the Court upon Plaintiff's Motion to Set Aside Stay, Tender Settlement Agreement and to Dismiss without Prejudice. (Doc. 41) Plaintiff seeks to (1) set aside the Stay of Action entered by this Court on November 29, 2005 (Doc. 33); (2) tender a settlement agreement by and between Plaintiff and Defendants Premier Aviation, LLC., Steven and Tammy Jackson, and Bank of Advance; and (3) dismiss this matter without prejudice to the remaining parties. The Court finds the Motion well-taken, and therefore Plaintiff's Motion to Set Aside Stay, Tender Settlement Agreement and to Dismiss without Prejudice (Doc. 41) is hereby **GRANTED**.

The Court notes that Defendant Mark Morgan has filed crossclaim against Defendants Charles Scharff and Signet Group, Inc., and a counterclaim against Plaintiff. Pursuant to Federal Rule of Civil Procedure 41(a)(2): "If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court." Here, Defendant Mark

Morgan has not filed any objection to dismissal of his crossclaims or counterclaims, and therefore, dismissal of these claims is appropriate.

Additionally, the Court notes that Defendant Signet Group, Inc. has not filed an answer or motion for summary judgment in this matter, and therefore dismissal is appropriate under Federal Rule of Civil Procedure 41(a)(1).

Based on the foregoing, it is hereby **ORDERED** that:

1. The stay of these proceedings be set aside;
2. The Partial Stipulated Judgment Entry (Doc. 41-2), attached to Plaintiff's Motion, shall be deemed as being filed;
3. Plaintiff's claims against based upon the assertion of any claim of right, title, or interest in the Beechcraft Aircraft BE 58 S/N TH 7112 US registry N 5677 S by or on behalf of Decker, Inc. or anyone claiming under them shall be dismissed with prejudice;
4. The counterclaims of Defendants Premier Aviation, LLC, Steven Jackson, Tammy Jackson, Bank of Advance shall be dismissed with prejudice;
5. Plaintiff's claims against Mark Morgan are dismissed without prejudice;
6. Defendant Mark Morgan's crossclaim against Defendants Charles Scharff and Signet Group, Inc., and a counterclaim against Plaintiff be dismissed without prejudice;
7. Defendant Signet Group, Inc. be dismissed without prejudice; and
8. This matter be **CLOSED** and **TERMINATED** from the docket of this Court.

**IT IS SO ORDERED.**

/s/ Michael R. Barrett

Michael R. Barrett, Judge  
United States District Court